

REMARKS

In response to the Office Action dated August 5, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1-16 are pending in this application.

Telephone Interview

Examiner Loo is thanked for the telephone interview of October 29, 2008. The undersigned explained the amendments to the claims and distinguished the claims from the cited documents. Examiner Loo asked a few questions about the combination of *Counterman* with *Prakash*, and the undersigned explained that “impermissible changes” would be required to support a new interpretation. The undersigned explained that the M.P.E.P. expressly explains several situations in which a reference “teaches away,” including when a proposed modification “render[s] the prior art unsatisfactory for its intended purpose” or when the proposed modification “change[s] the principle of operation of a reference.” See M.P.E.P. § 2145 (X)(D). Examiner Loo said she would speak with her supervisor.

Rejection of Claim 16 Under § 102 (b)

The Office rejected claim 16 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent Application Publication 2002/0097727 to *Prakash*. A claim, however, is anticipated only if each and every element is found in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). See also DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter “M.P.E.P.”).

Claim 16, however, is not anticipated by *Prakash*. Claim 16 recites features that are not disclosed or suggested by *Prakash*. Independent claim 16, for example, recites “*when the*

requested communications service exceeds an available bandwidth of a first physical medium, then temporarily dedicating and logically bonding a second physical medium to provide additional bandwidth” (emphasis added). Independent claim 16 also recites “*downloading the media content via the first physical medium and the temporarily dedicated and logically bonded second physical medium*” (emphasis added). Support for such features may be found at least in the as-filed application at paragraph [0015]. For the examiner’s convenience, independent claim 16 is reproduced below.

[c16] A method of providing communications services, comprising:

- receiving a request for communications service;
- downloading media content in response to the requested communications service;
- when the requested communications service exceeds an available bandwidth of a first physical medium, then temporarily dedicating and logically bonding a second physical medium to provide additional bandwidth;
- downloading the media content via the first physical medium and the temporarily dedicated and logically bonded second physical medium; and
- when the additional bandwidth is no longer needed, reverting the second physical medium to a shared configuration, thus allowing another requestor to receive increased bandwidth when required.

Prakash cannot anticipate all these features. *Prakash* discloses a hybrid network that increases bandwidth when necessary. See U.S. Patent Application Publication 2002/0097727 to *Prakash* at [0016]. A transmitting location and a receiving location are connected through two separate networks. See *id.* A stream manager at each location monitors buffer levels to transfer data to the receiving location using the two separate networks. See *id.* at [0017]. In *Prakash*, though, the separate networks are not “temporarily dedicated” to provide additional bandwidth. *Prakash*, then, cannot anticipate independent claim 16. The Office is respectfully requested to remove the § 102 (b) rejection of independent claim 16.

Rejection of Claims 1, 6 & 8-15 under § 103 (a)

The Office rejected claims 1, 6, and 8-15 under 35 U.S.C. § 103 (a) as being obvious over U.S. Patent Application Publication 2002/136240 to Counterman in view of *Prakash*.

Claims 1, 6, and 8-15, though, are not obvious over *Counterman* with *Prakash*. These claims recite, or incorporate, features that are not disclosed or suggested by the combined teaching of *Counterman* with *Prakash*. Independent claim 1, for example, recites “*when the requested communications service exceeds an available bandwidth of the first physical medium, then temporarily dedicating and logically bonding the second physical medium to the subscriber’s premise to provide additional bandwidth, such that first physical medium and the second physical medium share a session of information.*” Support for such features may be found at least in the as-filed application at paragraph [0015].

Counterman with *Prakash* does not obviate these features. While *Counterman* describes a shared line to physically separate subscribers, *Counterman*’s shared line is not “*dedicated*” when additional bandwidth is needed. *Counterman*’s shared line, in contradistinction, simultaneously delivers service to the physically separate subscribers. As *Counterman* explains, the “present invention allows the simultaneous delivery of different services to physically separate subscribers over a shared single pair of wires.” U.S. Patent Application Publication 2002/136240 to Counterman at paragraph [0009]. “The wire pairs are used to simultaneously carry different services to physically separated subscribers, i.e., a portion of a common line carries one service to one location and a second service to another location.” *Id.* (emphasis added). See also *id.* at paragraphs [0011] and [0025]. The combined teaching of *Counterman* with *Prakash*, then, fails to teach or suggest “*temporarily dedicating and logically bonding the second physical medium to the subscriber’s premise to provide additional bandwidth, such that first physical medium and the second physical medium share a session of information,*” as the independent claims recite.

The independent claims also recite even more distinguishing features. The independent claims, for example, recite “*providing the requested communications service via the logically*

bonded first physical medium and the temporarily dedicated and logically bonded second physical medium” and “when the additional bandwidth is no longer needed, removing the temporary dedicated and logical bonding of the second physical medium” (emphasis added). As the above paragraphs explained, because Counterman with Prakash simultaneously delivers service to the physically separate subscribers, the combined teaching of Counterman with Prakash cannot obviate the independent claims.

Claims 1, 6, and 8-15, then, are not obvious over *Counterman* with *Prakash*. The independent claims recite many features that are not taught or suggested by *Counterman* with *Prakash*. Their respective dependent claims incorporate these distinguishing features and recite additional features. One of ordinary skill in the art, then, would not think that claims 1, 6, and 8-15 are not obvious over *Counterman* with *Prakash*. The Office, then, is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claims 2, 5 & 7 under § 103 (a)

The Office rejected claims 2, 5, and 7 under 35 U.S.C. § 103 (a) as being obvious over *Counterman* in view of *Prakash* and further in view of U.S. Patent 6,452,923 to Gerszberg, *et al.* These claims, however, depend from independent claim 1 and, thus, incorporate the same distinguishing features. As the above paragraphs explained, both *Counterman* and *Prakash* fail to teach or suggest many of the features recited by independent claim 1, and *Gerszberg* does not cure these deficiencies. *Gerszberg* discloses a residential gateway that multiplexes digital services onto a coaxial cable, a twisted pair line, or both. See U.S. Patent 6,452,923 to Gerszberg, *et al.* at column 3, lines 8-12. Still, though, the combined teaching of *Counterman* and *Prakash* with *Gerszberg* fails to teach or suggest the “dedicated and logically bonded” second physical medium. One of ordinary skill in the art, then, would not think that claims 2, 5, and 7 are not obvious over the combined teaching of *Counterman*, *Prakash*, and *Gerszberg*. The Office, then, is respectfully requested to remove the § 103 (a) rejection of these claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at
(919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a large, stylized initial 'S' and 'Z'.

Scott P. Zimmerman
Attorney for the Assignee
Reg. No. 41,390